

Examining the statutory four factors traditionally used by courts to determine fair use, it is clear that *TWIHARDER* is a parody within the parameters of fair use. The four factors to determine fair use are as follows:

1. Purpose and character of the use; commercial or educational.

Commercial character is not an absolute bar to fair use and is often overcome by the highly transformative nature of parody, as is the case here.² *TWIHARDER* is clearly transformative given that the original *Twilight* is a drama/fantasy genre film, whereas *TWIHARDER* is a clear comedy lampooning the original films.

2. Nature of the copyrighted work.

This factor has been said to carry little weight in parody situations, since “parodies almost invariably copy publicly known, expressive works.”³

3. Amount and Substantiality; copying is considered in relation to the purpose of the use.

With parody, a fairly extensive use of the copyrighted work is permitted given that a parodist can copy as much as is needed to “conjure up” the original. Even the “heart” of a work may be copied for parody, if it’s the heart at which the parody is aimed. *TWIHARDER* uses only as much as necessary from the original *Twilight* films to evoke the *Twilight* narrative. The *TWIHARDER* characters are “inspired by” the original characters from the first two *Twilight* films and not direct copies. Likewise, certain scenes and dialogue in *TWIHARDER* are “inspired by” scenes and dialogue from the first two original *Twilight* films and not verbatim copies. Furthermore, there are a substantial number of original elements in the newly created work, including storylines, characters, dialogue, and songs.

4. Potential effect on the market.

It is understood that that an effective parody “may be so good that the public can never take the work seriously again”; thus, the possibility of destroying the market for the original work is not measured. Instead, what this factor analyzes is the potential of the parody to fulfill the market demand of the original work. Courts do not consider parodies to compete in the same markets as the original works they are parodying, so this factor is generally not an issue.⁴ Accordingly, there is no market harm in this case, because *TWIHARDER* is clearly not a substitute for the original *Twilight* films (as clearly demonstrated above), given that it serves a different market purpose as a “zany, surreal parody of the *Twilight* saga.”

² *Id.* at 578.

³ *Id.* at 586.

⁴ *Id.* at 591 (“Indeed, as to parody pure and simple, it is more likely that the new work will not affect the market for the original in a way cognizable under this factor, that is, by acting as a substitute for it...(citation omitted). This is so because the parody and the original usually serve different market functions.”)